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8 Attorneys for Plaintiff  
9 BACKGRID USA, INC.

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 BACKGRID USA, INC.,

13 *Plaintiff,*

14 v.

15 JESSE KAMM INC.,

16 *Defendant.*

Case No.: 2:23-cv-10602

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT**

*Jury Trial Demanded*

17 Plaintiff BackGrid USA, Inc., for its Complaint against Defendant Jesse  
18 Kamm Inc., alleges as follows:

19 **JURISDICTION**

20 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C.  
21 § 101 et seq. This Court therefore has jurisdiction over the subject matter of  
22 this action under 28 U.S.C. § 1331 (federal question) and § 1338 (copyright).

23 **PARTIES**

24 ***Plaintiff BackGrid***

25 2. Plaintiff BackGrid is an entity organized and existing under the  
26 laws of the State of California with its principal place of business in Redondo  
27 Beach, California.



1 **BACKGROUND FACTS**

2 *The Copyrighted Photograph*

3 11. BackGrid is the owner and copyright holder of a photographic  
4 images (the “Image”) depicting actress Dakota Johnson wearing Jesse Kamm  
5 brand pants. The Image was registered with the U.S. Copyright Office as Reg.  
6 No. VA 2-130-390 (eff. Dec. 14, 2018).

7 12. BackGrid never licensed the Image to defendant. Nevertheless,  
8 defendant used the Image without authorization or permission to do so.

9 13. Specifically, defendant or its agents copied the Image from  
10 Internet sources – on information and belief including legitimate licensees of  
11 BackGrid – stored the Image on its servers, and displayed the Image on the  
12 Instagram account @jessekamm and using it to promote its high-end apparel.

13 14. Plaintiff, through its agent, discovered defendant’s infringement  
14 on December 19, 2020.

15 *Defendant’s Infringements Harmed BackGrid*

16 15. The Image is creative, distinctive, and – as evidenced by  
17 defendant’s use and misappropriation of it – valuable. Because of the Image’s  
18 quality, visual appeal, and celebrity subject matter, BackGrid stood to gain  
19 revenue from licensing it.

20 16. But defendant’s unauthorized use of the Image harmed the  
21 existing and future market for the Images. Defendant’s website posts made  
22 the Image immediately available to its nearly 100,000 followers and to the  
23 public, including consumers of entertainment and fashion news – and  
24 especially news and images of the celebrity subjects of the Image – who  
25 would otherwise be interested in viewing licensed versions of the Image in  
26 the magazines, newspapers, and online publications that are BackGrid’s  
27 customers.  
28

1           17. Defendant's unauthorized use of the Image also harms  
2 BackGrid's business model by driving down the prices for legitimately  
3 licensed celebrity images and driving away BackGrid's actual and potential  
4 customers. BackGrid's customers – among them, media companies who  
5 compete with defendant and, unlike defendant, pay large license fees for  
6 celebrity visual content – are less likely to purchase licenses, or pay as much  
7 for a license, when the same visual content will be widely distributed  
8 simultaneously on the websites of their competitors.

9           18. BackGrid sold and offered for sale the Image on an Exclusive  
10 basis, meaning that it depicts celebrities or situations that are in high  
11 demand, or it is the only photograph available of a specific celebrity and  
12 situation in the world (because no other photographers were present at the  
13 time the photograph was taken), or both. For those reasons, Exclusive images  
14 command a higher licensing fee and are more valuable.

15           19. In addition, defendant's unauthorized use of the Image is  
16 commercial in nature. Defendant uses in-demand content about popular  
17 celebrities to promote its expensive products.

18           20. Indeed, on information and belief, defendant specifically posted  
19 the Image on Instagram to increase sales of its products. On information and  
20 belief, defendant knew that because of the Image's depictions of popular  
21 celebrities, users would be attracted to view the Image and thus more likely  
22 to buy the product that the celebrity was wearing.

23           21. As a company in the fashion industry, defendant operates in an  
24 industry in which copyrights are prevalent and well-understood. Based on  
25 that knowledge, defendant was aware of the importance of copyright  
26 protection and knew that it needed to have but did not have permission to  
27 use the Image, and/or it acted recklessly by posting the Image without  
28 determining the right to do so.

CLAIM ONE

(For Copyright Infringement, 17 U.S.C. § 501)

22. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth here.

23. Plaintiff is the authors and or/copyright owners of the protected Image named above in this Complaint.

24. Defendant has reproduced, displayed, or otherwise copied the Image without plaintiff's authorization or license.

25. The foregoing acts of defendant infringed upon the exclusive rights granted to copyright owners under 17 U.S.C. § 106 to display, reproduce, and distribute their work to the public. Such actions and conduct constitute copyright infringement in violation of 17 U.S.C. §§ 501 et seq.

26. Plaintiff has complied in all respects with 17 U.S.C §§ 101 et seq. and secured and registered the exclusive rights and privileges in and to the copyrights of the above-referenced works in accordance with 17 U.S.C § 408.

27. Plaintiff suffered damages as a result of defendant's unauthorized use of the Image.

28. Having timely registered its copyright in the Image, plaintiff is entitled to elect statutory damages under 17 U.S.C. § 412 and § 504(c), in an amount of not less than \$750 or more than \$30,000 per infringement of each work registered.

29. Plaintiff alleges, on information and belief, that that defendant's actions were intentional or in reckless disregard of plaintiff's copyrights, and that such actions support an award of enhanced statutory damages for willful infringement under the Copyright Act, 17 U.S.C. § 504(c)(2), in the sum of up to \$150,000 per infringed work.

30. In the alternative, plaintiff is entitled to recovery of its actual damages and defendant's profits attributable to the infringement of the Images, under 17 U.S.C. § 504(b).

31. Within the time permitted by law, plaintiff will make its election between actual damages and profit disgorgement, or statutory damages.

32. Plaintiff is also entitled to a discretionary award of attorney fees under 17 U.S.C. § 412 and § 505.

## PRAYER FOR RELIEF

WHEREFORE, plaintiff requests the following:

A. For a preliminary and permanent injunction against defendant and anyone working in concert with them from further copying or displaying the Image;

B. For an order requiring defendant to account to plaintiff for their profits and any damages sustained by plaintiff arising from the acts of infringement;

C. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Image used in violation of plaintiffs' copyrights—including digital copies or any other means by which they could be used again by defendant without plaintiff's authorization—as well as all related records and documents;

D. For actual damages and all profits derived from the unauthorized use of the Image or, where applicable and at plaintiff's election, statutory damages;

E. For an award of pre-judgment interest as allowed by law;

F. For reasonable attorney fees;

G. For court costs, expert witness fees, and all other costs authorized under law;

1 H. For such other and further relief as the Court deems just and  
2 proper.

3  
4 **JURY TRIAL DEMAND**

5 Plaintiff demands a trial by jury of all issues permitted by law.

6  
7 Dated: December 19, 2023 Respectfully submitted,

8 **PERKOWSKI LEGAL, PC**

9  
10 By /s/ Peter Perkowski  
11 :

Peter E. Perkowski

12 Attorneys for Plaintiff  
13 BACKGRID USA, INC.  
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